CF0000063043

CA 994/2000 (02)

XII-189(Jail)C.J.P.R./9-94

APPEAL OF PRISONER

No. S.T. No. 429/98. Name संतराम चौहान

Father's name मोहन लाल चौहान

Residence धारा 302 भा.द.वि. Age 18 वर्ष

Sentenced to सश्रम आजीवन कारावास एवं on 14/2/2000

Under Section 5 वर्ष अर्थदण्ड अदा न करने पर 3 माह सश्रम कारावास by श्री D.J. Korba (M.P.)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1. Date of Application for copy of Judgement संलग्न निर्णय प्रति लिपि
2. Date on which copy received- 4/3/2000
3. Date on which Appeal sent- 7/3/2000
4. Whether the prisoner wishes to be represented or not- No.

No. S.T. No. 429/98 Name संतराम S/o मोहन लाल चौहान

Confined in Central Jail- Bilaspur (M.P.)

396 Dated 7/3/2000

Forwarded to the माननीय उच्च न्यायालय, जबलपुर (मध्य प्रदेश) together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

JAIL SUPERINTENDENT
CENTRAL JAIL BILASPUR

Jail

Date of receipt in Office

Date of receipt of record to accompany the

Memo of Appeal to the Appellate Court

No. Date .....199

Forwarded to the :-

Date of receipt in Appellate Court

CENTRAL JAIL BILASPUR

(7)

(26)

A.F.R.

1391

**HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH**

(DIVISION BENCH)

**Criminal Appeal No.994 of 2000**

Sant Kumar Chouhan

- Versus -

State of Chhattisgarh

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**JUDGMENT FOR CONSIDERATION**

Sd/-
**J U D G E**
24/11-2005

**HON'BLE MR. JUSTICE DILIP R DESHMUKH**

Sd/-
**Dilip Raosaheb Deshmukh**
**Judge**

**POST FOR JUDGMENT ON 30th NOVEMBER, 2005**

Sd/-
**L.C. Bhadoo**
**Judge**

(27)

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No.994 of 2000**

Sant Kumar Chouhan

- Versus -

State of Chhattisgarh

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Present: -

Mrs. Kiran Jain, Advocate: For the appellant.

Mr. Akhil Mishra, Panel Lawyer For the State/respondent.

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**DIVISION BENCH: -**

**HON'BLE MR. L.C. BHADOO AND**

**HON'BLE MR.DILIP RAOSAHEB DESHMUKH JJ.**

**J U D G M E N T**

(Delivered on 3rd November, 2005)

*The following judgment of the Court was delivered by L.C. Bhadoo, J:-*

1. This appeal is directed against the judgment dated 14.02.2000 delivered in Sessions Trial No.429/98 by Shri Vinod Bhardwaj, Additional Sessions Judge, Korba whereby appellant Sant Kumar was convicted under Section 302 of the Indian Penal Code for committing murder of Samay Lal on 23.5.1998 at about 7.30 p.m. in Village Kohadia Basti and was sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo S.I. for 03 months.

2. The factual matrix lies within a narrow compass. On 23.5.1998 at about 7.30 p.m. Samay Lal had gone for a walk in Kohadia Basti. The appellant came on a bicycle in a drunken state and saying that Samay Lal you have to face the consequences of quarrelling with Pyarelal, took out a knife and stabbed Samay Lal on the right side of his stomach. Samay Lal fell down. The appellant ran away. F.I.R. was lodged by Samay Lal in Police Station Outpost, Rampur vide Ex.P-10 wherein name of the assailant was not mentioned. It was stated therein that assailant was a guest

of Pyarelal Chouhan. Samay Lal was sent for medical examination. Dr. A.D. Puraina (PW-9) examined Samay Lal and found a stabbed injury in the size of 2 x 0.5 cm at the right side of abdomen in the liver area. The margins were sharp. He advised X-ray of abdomen. Samay Lal was admitted in Hundred Bedded Hospital, Korba. On 27.5.1998 Naib Tehsildar Shri B.R. Thakur (PW-4) recorded the dying declaration of Samay Lal vide Ex.P-3 who named Sant Kumar as the assailant. Samay Lal succumbed to the injury on 27.5.1998. Post mortem was conducted by Dr. M.S. Paul (PW-8) who found one stab injury in the abdomen hepatic area in mid circular line 2 inches below the sub costal line size 1.5 inches in length and peritoneum deep. The direction of the wound was towards stomach. Abdominal distension was present. He opined that death of Samay Lal was due to syncope as a result of septicaemia due to perforation of the stomach. During investigation, Assistant Sub-Inspector Shri M.M. Khan (PW-11) recovered under the memorandum Ex.P-5 of the appellant one iron knife with a wooden handle. After completion of investigation, the appellant was prosecuted under Section 302 of the Indian Penal Code.

3. The appellant abjured the guilt, pleaded innocence and led no evidence in defence.

4. The prosecution examined as many as 11 witnesses. Relying upon the evidence led by the prosecution, the trial Judge convicted the appellant under Section 302 of the I.P.C. for committing murder of Samay Lal and sentenced him as aforesaid in Para-1.

5. Mrs. Kiran Jain, learned counsel for the appellant has argued that no legal & reliable evidence was led by the prosecution to justify conviction of the appellant under Section 302 of the I.P.C. She has drawn attention of the Court to the fact that in the F.I.R. lodged by the deceased himself, the appellant had not been named as the assailant which renders the testimony of Sawan Bai (PW-1) wife of the deceased wholly unreliable that Samay Lal had told her that he was stabbed by appellant Sant Kumar. In the alternative,

learned counsel has contended that there was no evidence, which would show motive for the appellant to commit murder of Samay Lal. Only a single injury in the stomach was alleged to have been caused by the appellant and therefore, the offence, if any, committed by the appellant would not travel beyond Section 304 Part-II of the I.P.C. and custodial detention already undergone by the appellant since 28.5.1998 would be sufficient to meet the ends of justice.

6. On the other hand, Mr. Akhil Mishra, learned Panel Lawyer for the State argued in support of the impugned judgment.

7. We have heard the rival contentions and also perused the record. The testimony of Dr. M.S. Paul (PW-8) and the injury found on Samay Lal leaves no doubt that death of Samay Lal was homicidal. This aspect has also not been disputed by learned counsel for the appellant during the course of argument.

8. Head Constable Gorelal (PW-12) has proved the F.I.R. Ex.P-10 lodged by Samay Lal at the Police Out-post, Rampur on 23.5.1998 and has in Para 5 of his testimony clearly stated that the deceased did not name the appellant in the F.I.R. lodged by him. The F.I.R. Ex.P-10 shows that a guest of Pyarelal was alleged to have stabbed Samay Lal.

9. Now coming to the involvement of accused/appellant in committing the murder of Samay Lal, there is no eyewitness in this case and whole case rests on; **(a)** dying declaration made by deceased Samay Lal (Ex.P-3) before the Naib Tehsildar Shri B.R. Thakur (PW-4) in presence of Dr. A.D. Puraina (PW-9) in Sai Hospital, Korba; **(b)** oral dying declaration made by deceased Samay Lal before his wife namely Sawan Bai (PW-1) and; **(c)** recovery of weapon of offence i.e. knife at the instance of the accused/appellant in pursuance of information given by him under Section 27 of the Evidence Act.

10. As far as Point No.1 is concerned, the question before the Court is whether a conviction can be based solely on the dying declaration made by the deceased and whether the dying declaration made by deceased inspire full confidence of the Court. It would be relevant to have a glance on the law laid down by the Hon'ble Apex Court in this respect. In the matter of **K. Ramachandra Reddy and another Vs. The Public Prosecutor** reported in **AIR 1976 SUPREME COURT 1994** the Hon'ble Apex Court has held that "*the dying declaration is admissible under Section 32 and not being a statement on oath so that its truth could be tested by cross-examination, the Courts have to apply the strictest scrutiny and the closest circumspection to the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person, yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination. The Court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancour. Once the Court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration. In order to test the reliability of a dying declaration, the Court has to kept in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.*" One of the important tests of reliability

of a dying declaration is that the person who recorded it must be satisfied that the deceased was in a fit state of mind. The Constitution Bench of the Hon'ble Apex Court in the matter of **Laxman Vs. State of Maharashtra** reported in **(2002) 6 Supreme Court Cases 710** has held that;

> "The situation in which a man is on the deathbed is very solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful..."

In the matter of **P.V.Radhakrishna Vs. State of Karnataka** reported in **AIR 2003 SUPREME COURT 2859**

the Hon'ble Apex Court has held that "*Clause (1) of Section 32 makes relevant what is generally described as dying declaration. The grounds of admission are; firstly, necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating as obligation equal to that which is imposed by a positive oath administered in a Court of justice.*' Therefore, in view of the law laid down by the Hon'ble Apex Court if a dying declaration inspires full confidence of the Court in its truthfulness & correctness and same stood up to the tests laid down by the Hon'ble Apex Court, the conviction can be based solely on the dying declaration because the sanctity attached behind the dying declaration is that a person on the verge of death will not implicate any person in a false case.

11. Now on the basis of above law, we proceed to examine the facts of the present case and also consider the arguments advanced by learned counsel for the accused/appellant. Dying declaration (Ex.P-3) was recorded by the Naib Tehsildar Shri B.R. Thakur-(PW-4) on 27.5.1998 and in this dying declaration deceased Samay Lal had categorically stated that Sant Kumar was the person who stabbed him. PW-4 Shri B.R. Thakur, Naib Tehsildar cum Executive Magistrate, who recorded the above statement has categorically stated in Para-2 of his evidence that after reaching the hospital he asked certain questions to Samay Lal and he found that Samay Lal was in a position to understand the questions and reply the same. First of all he asked the name of declarant and thereafter his father's

name. Even the deceased disclosed the place where he was stabbed and then he disclosed that Sant Kumar i.e. the present accused/appellant stabbed him with a knife. It is true that in Para-4 this witness has stated that deceased Samay Lal was in injured condition and was not able to give answers in clear-cut voice, but this does not mean that Samay Lal was not able to understand the questions and also was not able to give answers of the same. In the earlier part of evidence, this witness has categorically stated that injured was in a fit condition to give the statement and was understanding the questions and replying the same. In cross-examination of this witness the defence counsel has not been able to elicit anything which makes the evidence of this witness unreliable or untrustworthy or that the deceased Samay Lal was not fit to give the statement. PW-9 Dr. A.D. Puraina, who was present at the time of recording of dying declaration, has categorically stated in his evidence that Samay Lal was in a fit state of mind to give the statement and that is why he gave a certificate on the dying declaration which bears his signatures between 'C to C'. In the cross-examination of this witness also the defence counsel has not been able to elicit any fact that Samay Lal was not in a fit state of mind to give the statement. The dying declaration (Ex.P-3) bears the certificate and signatures in which doctor has mentioned that the patient is conscious and can give his statement. Therefore, in view of the above evidence of PW-4 Shri B.R. Thakur and PW-9 Dr. A.D. Puraina it is established that Samay Lal was in a fit state of mind to give the statement and infact he gave the statement Ex.P-3 in which he categorically stated that accused Sant Kumar was the author of his stab wound. Nothing has been elicited in the cross-examination of the Executive Magistrate that Samay Lal gave the false statement in order to implicate the accused/appellant without any rhyme or reason. This dying declaration further stands corroborated by the evidence of PW-1 Sawan Bai, wife of the deceased before whom the deceased made the oral dying declaration when she went to meet her husband

Samay Lal in the hospital. She has stated that on her enquiry, Samay Lal informed her that Sant Kumar stabbed him. In the cross-examination of this witness also the defence has not been able to elicit any circumstance or fact that the above evidence of this witness, for any reason, is not reliable or trustworthy. Even in the statement recorded by the police under Section 161 of the Cr.P.C. this witness has stated that her husband informed her in the hospital that Sant Kumar was the person who stabbed him.

12. Now coming to the arguments advanced by learned counsel for the accused/appellant that in the F.I.R., which was lodged none else than by injured Samay Lal himself, the name of accused/appellant does not find place, therefore, the dying declaration in which the name of accused was disclosed first time by the deceased cannot be relied upon. If we look into the F.I.R. (Ex. P-10), in this report deceased Samay Lal disclosed that on 23.5.1998 at about 7.30 p.m. when he was going for walk a guest of Pyarelal Chouhan, was coming on a bicycle, met him on the way and said that you do not know him, you have quarreled with Pyarelal and at the same time he took out a knife from his attire and stabbed him on stomach, the blood started oozing out of it. It is true that in this F.I.R. deceased has not clearly mentioned the name of accused Sant Kumar Chouhan, but he has clearly stated that the assailant was a guest of Pyarelal Chouhan. Similarly, in the dying declaration Samay Lal had clearly disclosed the identity of assailant as being the relative of Pyarelal Chouhan. Thus, he had disclosed sufficient identity of the person who stabbed him and there is every possibility that due to pain or for any other reason Samay Lal could not mention the name of accused at the time of lodging the report, but later on he disclosed the name of accused. This fact has not been denied by the accused that he is not the relative of Pyarelal Chouhan. Even in the police custody the accused/ appellant gave the information (Ex.P-5) under Section 27 of the Evidence Act in which he has stated that weapon of offence has been kept in the house of Pyarelal Chouhan. In pursuance of this

information the knife was recovered at the instance of the accused from the house of Pyarelal Chouhan under Ex.P-6, which has been proved by the Investigating Officer Shri M.M. Khan, Assistant Sub-Inspector (PW-11), who conducted the investigation.

13. Therefore, in view of the above circumstances, it is established that accused/appellant was the author of attack, as the weapon of offence i.e. knife was recovered from the house of Pyarelal at the instance of accused/appellant and the deceased mentioned in the F.I.R. that a relative of Pyarlal Chouhan stabbed him and thereafter in the dying declaration he disclosed the name of accused/appellant and it is admitted position that accused is the relative of Pyarelal Chouhan. In the cross-examination of Sawan Bai (PW-1)-wife of the deceased or in the cross-examination of PW-4 Shri B.R. Thakur the defence has not been able to bring any circumstance, which shows that the deceased has implicated the accused in a false case due to animosity or any other reason. Therefore, the conviction can be based on the basis of dying declaration (Ex.P-3) & oral dying declaration made before Sawan Bai (PW-1), as the same does not suffer from any infirmity and same has stood up to the tests laid down by the Hon'ble Apex Court. The above dying declaration also stands corroborated by the fact that the weapon of offence i.e. knife was recovered at the instance of the accused/appellant based on the information Ex.P-5 given by him to PW-11 Shri M.M. Khan, Investigating Officer and in pursuance of that under Ex.P-6 the weapon of offence was recovered from the residence of Pyarelal Chouhan. The independent witness has also stated that the knife was recovered from the residence of Pyarelal Chouhan under Ex.P-6. Even though this witness has not supported the prosecution regarding giving information Ex.P-5 but the same has been proved by the Investigating Officer (PW-11) and in the cross-examination of this witness the defence has not been able to elicit any circumstance, which makes the above evidence of this witness unreliable. Therefore, we are of the considered opinion that based on the dying

declaration the prosecution has been able to establish the case against the accused/appellant beyond reasonable doubts and the finding to that effect of the trial Court does not require interference by this Court, as there is no infirmity.

14. Now coming to the second limb of argument advanced by learned counsel for the accused/appellant that the offence against the accused/appellant does not travel beyond Section 304 Part-11 of the Indian Penal Code. From the evidence available on record it is established that the accused/appellant all of a sudden stabbed the deceased Samay Lal only once and the deceased died after four days from the date of incident. Post mortem report and the evidence of Dr. Paul (PW-8) shows that death of deceased Samay Lal was due to syncope as a result of septicaemia due to perforation of the stomach. Therefore, it appears that the deceased was not treated properly, had the deceased Samay Lal was given proper treatment there was every chance of his survival. There is no definite medical opinion on record that the injury inflicted on the stomach of deceased was sufficient in the ordinary course of nature to cause death. There is no evidence on record that the accused assaulted the deceased with a pre-concerted plan with the intention to cause death, but according to the evidence it appears that the accused all of a sudden without any pre-meditation in a sudden quarrel without taking undue advantage stabbed the deceased. Therefore, the case of the accused is covered under Exception–4 of Section 300 of the Indian Penal Code, 1860 and offence against the accused under Section 304 Part-2 was made out for which we are fortified by the decision of the Hon'ble Apex Court in the matter of **Shanmugam alias Kulandaivelu Vs State of Tamil Nadu** reported in **2003 Cri.L.J. (Supreme Court) 418** wherein the Court has held that "*accused in a petty quarrel armed with spear stabbed deceased on his abdomen and chest- Victim died a week after the incident, out of septicaemia and evidence of doctor, who attended victim in the hospital not leading to a definite conclusion as to sufficiency of injuries*

*causing death in the ordinary course and in order to held accused guilty for murder it has to be established that the intention was to cause severe bodily injuries which were likely to cause death in the ordinary course of nature."*

15. In the result, the appeal of the appellant is partly succeeds, the conviction and sentence awarded to appellant Sant Kumar Chouhan under Section 302 of the Indian Penal Code are hereby set aside and instead thereof, accused/appellant Sant Kumar Chouhan is convicted for commission of offence under Section 304 Part-2 of the I.P.C. and he is sentenced to undergo rigorous imprisonment for 08 years. Set-off for detention undergone by appellant Sant Kumar Chouhan since 28.5.1998 shall be given to him.

**Sd/-**
**L.C. Bhadoo**
**Judge**

**Sd/-**
**Dilip Raosaheb Deshmukh**
**Judge**

Roshan/